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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,739

02/07/2006

Esther Breuning

09931-00052-US

5924

23416

7590

05/27/2009

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EXAMINER

WILSON, MICHAEL H

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Attachment to Advisory Action**

1. The proposed amendment to the claims, which amends claim 3, in the reply dated 27 April, 2009 will be NOT entered, because it would require further search and consideration due to a change in the scope of the present claims.
2. Arguments regarding rejections based on Roberts et al. relate to the claim amendment which is not entered, and therefore are not persuasive.
3. Arguments regarding the use of secondary references in a 103 rejection have been fully considered but are not persuasive.

Applicants argue that the statement that modifications of the prior art to meet the claimed invention would have been "obvious to one of ordinary skill in the art at the time the invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. However the examiner notes that both motivation to combine and the reasons one of ordinary skill in the art would reasonably expect success have previously been articulated in the rejections of record. Therefore the rejections do not merely make the conclusory statement, but articulate reasoning with rational underpinning to support the conclusion of obviousness.

Applicants also argue that the Examiner cannot selectively pick and choose from the disclosed parameters without proper motivation as to a particular selection; and asserts that the mere fact that a reference may be modified to reflect features of the

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claimed invention does not make the modification, and hence the claimed invention obvious unless the prior art suggested the desirability of such modification. Thus, applicants argue that that the examiner used impermissible hindsight reasoning. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The rejections of record only use knowledge which was within the level of ordinary skill at the time the claimed invention was made with motivation to combine coming explicitly or implicitly from the cited references and not from applicant's specification. Therefore the rejections of record are not based on impermissible hindsight reasoning.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL WILSON whose telephone number is (571) 270-3882. The examiner can normally be reached on Monday-Thursday, 7:30-5:00PM EST, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Supervisory Patent Examiner, Art Unit 1794

MHW